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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

**QWEST CORPORATION'S COMMENTS TO THE STAFF'S PRELIMINARY
REPORT ON NIDS AND LINE SPLITTING**

Qwest Corporation hereby provides its comments to the Arizona Corporation Commission Staff's (Staff's) Report issued on November 26, 2001, concerning Network Interface Devices (NIDs) and Line Splitting (Report). Qwest commends the Staff for its hard work in generating and issuing the Report. Qwest accepts many of the conclusions in the Report; but requests reconsideration of three NID issues [(whether CLECs may access subloops without utilizing subloop procedures) (whether CLECs may remove Qwest's wires from the NID) and (whether CLECs must submit an LSR to access the protector side of the NID)]. Qwest believes that the recommended decision on these issues is inconsistent with the law, facts, previous Staff decisions and/or public policy.

I. BACKGROUND

Qwest and a number of CLECs participated in approximately two weeks of workshops in Arizona on loops, line splitting and NIDs. The Staff issued its

recommended report on these subjects in two stages: one on loops and this Report on NIDs and line splitting. Qwest will only address the second aspect of these workshops in these comments. With respect to NIDs and line splitting, substantial progress was made resolving a number of key issues. Nonetheless, several impasse issues remained. Qwest seeks reconsideration of three issues and clarification of one other. Each of these issues will be discussed below.

II. LINE SPLITTING

Impasse Issue No. 5: Must Qwest Continue to Offer Line Splitting to CLECs Over Non-Copper Loops When "Technically Feasible".

This issue concerns whether Qwest must allow CLECs to line split over fiber loops. Staff essentially states that Qwest must allow such line splitting to the extent it is "technically feasible." "Therefore, Staff recommended that [SGAT] Section 9.4.1.1 be revised to state:

To the extent additional line sharing technologies and transport mechanisms are identified, Qwest will allow CLECs to line share to the extent that Qwest is obligated by law to provide access to such technology. *The burden shall be upon Qwest to demonstrate that such line sharing method is not technically feasible.* For each additional line sharing technology and transport mechanism identified, Qwest will amend the rates, terms and conditions for line sharing as appropriate.

Report at ¶139.

Qwest does not object to Staff's SGAT language to the extent it requires Qwest to line split as technically feasible with Qwest's existing network. However, this language could be read in isolation to suggest that Qwest must modify and add to its network to accommodate new forms of line splitting. As Haygood Belinger acknowledged in the Commission's November 16, 2001 Open Meeting, Qwest is not obligated to construct

unbundled loops on behalf of CLECs outside of its Carrier of Last Resort (COLR) obligations. Staff acknowledged as much in its recommended unbundled loop report. Unbundled Loop Report at ¶171. Qwest could restate the basis of its position in great detail; however, it has already done so in brief concerning checklist items 2 and 4. Rather than restate that argument here, Qwest incorporates those arguments by reference.

Qwest, therefore, does not object to providing line splitting as technically feasibly in its existing network; however, it would object to the extent that CLECs would ask it to modify its existing network to make it technically feasible. Therefore, Qwest recommends that the Staff modify its proposed SGAT language to state:

To the extent additional line sharing technologies and transport mechanisms are identified, Qwest will allow CLECs to line share to the extent that Qwest is obligated by law to provide access to such technology. *The burden shall be upon Qwest to demonstrate that such line sharing method is not technically feasible utilizing the existing facilities and capabilities in its existing network.* For each additional line sharing technology and transport mechanism identified, Qwest will amend the rates, terms and conditions for line sharing as appropriate.

CLECs may argue that the existing line sharing decision requires Qwest to purchase (subject to reimbursement by CLECs) and install POTS Splitters on behalf of CLECs and thereby modify its existing network. This is a true statement. However, the reason Qwest must modify its network to include POTS Splitters is because the express terms of the FCC's line sharing decision requires such modification.¹ The proposed SGAT language satisfies this issue because it also states "Qwest will allow CLECs to line share to the extent that Qwest is *obligated by law* to provide access to such technology."

¹ Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

Thus, to the extent the FCC clarifies Qwest's legal obligations in its existing NPRM concerning line sharing over fiber,² of course Qwest will comply with those legal obligations.

Qwest respectfully requests that the Staff clarify its proposed SGAT language as stated above. This will ensure that this issue and the Staff's prior determination on obligation to build can be read in harmony.

III. NETWORK IN INTERFACE DEVICES (NIDs)

Impasse Issue No. 1: Staff Should Require CLECs to Utilize the Subloop Process Defined in SGAT §9.3 To Access Subloop Elements Such As Intrabuilding Cable.

In NID disputed issue number 1, the Staff decided that Qwest must unbundle stand-alone NIDs for CLECs. Specifically, Staff concluded that "[t]he FCC was clear in its UNE Remand Order that the CLEC is to have access to Qwest's NIDS." *Report at ¶145*. Qwest does not dispute this point. Qwest unbundles NIDs of all types irrespective of whether the "NID" is a demarcation point or when Qwest owns the facilities on the customer side of the "NID." Thus Qwest makes NIDs of all types available on a stand-alone basis. That is the purpose of SGAT § 9.5.

The issue Staff decided, however, is not the fundamental basis of the dispute. Make no mistake about it, what AT&T seeks is the ability to gain access to Qwest subloop elements without utilizing the detailed processes set forth in SGAT §9.3. The ACC has already held that (1) Qwest has 2-10 days to determine whether it or the landlord owns the facilities inside the MTE (SGAT § 9.3.5.4.1); (2) Qwest must complete an inventory of CLEC facilities going into the MTE (SGAT § 9.3.3.5); and (3) CLECs must submit a LSR to obtain access to the subloop element (SGAT § 9.3.5.4.5).

² Line Sharing Reconsideration Order, FCC 01-26 (Jan. 19, 2001).

Nonetheless, AT&T is unabashed in its attempt to end run around the subloop requirements. In NID Issue 1, Staff summarizes AT&T's comments as "AT&T proposes that a fair and lawful rate be set for access to on premises wiring and assumes that the applicable cost cases will include all components of the NID." *Report at ¶141*. There is no need to discuss subloop rates when discussing NIDs unless AT&T hopes to avoid its legal requirements around subloop unbundling. The Multi State Facilitator put it best:

While both Qwest and AT&T expounded on this subject at great length, the discussion appears to raise no issues other than that considered in the first unresolved *Subloop Unbundling* issue (*Subloop Access at MTE Terminals*) from the June 11, 2001 *Third Report – Emerging Services* from these workshops. *In essence, AT&T is still seeking to argue that MTE terminals are NIDs, because it believes that winning the definition issue will give it essentially unmediated access to such terminals.*

Multi State Report at p.76 (emphasis supplied). In this Report, the Staff should not attempt to undo the Emerging Services Report already approved by the ACC.

The second paragraph of the Staff's decision on this issue highlights the problem.

It reads:

146. The second question raised is whether all NIDs ordered in conjunction with subloops are subject to the terms and conditions of SGAT Section 9.3, Qwest's collocation provisions. *Staff believes that Qwest should be required to modify Section 9.5 to remove language that all NIDs ordered in conjunction with subloops are subject to the terms and conditions of SGAT section 9.3.* Staff believes that this language is overly broad and does not comport with FCC requirements.

This paragraph suggests that CLECs can access subloop elements without utilizing the provisions of SGAT § 9.3. Moreover, the basis for CLECs claim is totally fallacious: As

AT&T knows full well, Qwest does not require collocation in MTE Terminals/NIDs. *See SGAT § 9.3.3.1.* This issue closed as consensus in the subloop workshops.

An understanding of how the SGAT is intended to work is instructive. Every time a CLEC orders an unbundled loop, the CLEC obtains the functionality of the NID as well. This is also true of subloop unbundling. In the UNE Remand Order, the FCC held that “competitors purchasing a subloop at the NID . . . will acquire the functionality of the NID for the subloop portion they purchase.”³ Thus, the FCC determined that there is “no need to . . . include the NID as part of any other subloop element.”⁴ CLECs can, therefore, order one of three items from Qwest: (1) unbundled loops (and the NID comes with); (2) subloop elements (and the NID comes with); or (3) unbundled stand alone NIDs. To obtain unbundled loops, SGAT § 9.2 governs; to obtain subloops, SGAT § 9.3 governs; and to obtain stand-alone NIDs, SGAT § 9.5 governs. AT&T is hoping that the SGAT language will become so confused that it can utilize SGAT § 9.5 – the NID section – to access subloops. The Staff should not permit this confusion.

The Staff should reassess its conclusion and affirm the language in SGAT §9.5.1. All it states is that “If CLEC seeks to access a NID *as well as a Subloop* connected to that NID, it may do so only pursuant to Section 9.3.” This is exactly what the UNE Remand Order required. Given the FCC’s very clear law on the subject and the ACC’s prior emerging services decision, which determined how a CLEC should access subloop unbundling, this language is fully appropriate. The Staff should reinstate this SGAT language.

³ UNE Remand Order ¶ 235.

⁴ UNE Remand Order ¶ 235.

Impasse Issue No. 5: Staff Should Require CLECs to Utilize the Subloop Process Defined in SGAT §9.3 To Access Subloop Elements Such As Intrabuilding Cable.

Again, Qwest does not object to the issue the Staff actually decided. Staff held that "Qwest must provide access to all of the NID's features, functions and capabilities." *Report at ¶164.* SGAT §9.5.1 already states that "[t]he NID carries with it all features, functions and capabilities" See also SGAT §9.5.2.1.2 ("Qwest shall allow CLEC to use all features and functionality of the Qwest NID including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future."). Therefore, Qwest is somewhat confused about what the Staff is ordering it to do.

AT&T's brief in Arizona is equally confusing. It also requests that Qwest provide access to all of the NID's features, functions and capabilities. As stated above, Qwest already provides such access. Regardless of how the CLEC obtains the NID, via the purchase of an unbundled loop, a subloop or a stand alone NID, the features, functions and capabilities of the NID are always included. Nonetheless, the issue in the Report references SGAT §9.5.4.2. That SGAT language reads:

9.5.4.2 CLEC may access a MTE NID after determining that the terminal in question is a NID. Qwest shall have ten (10) calendar days to respond to such an inquiry. If the terminal is a NID and CLEC wishes to access the Customer field of the NID, no additional verification is needed by Qwest. CLEC shall tag their jumper wire.

9.5.4.2.1 When CLEC seeks to connect to a cross-connect field other than to the Customer field of the NID, CLEC shall submit a LSR for connection to the NID. Qwest shall notify CLEC, within ten (10) business days, if the connection is not Technically Feasible. In such cases, Qwest shall inform CLEC of the basis for its claim of technical infeasibility and, at the same time, identify all alternative points of connection that Qwest would support. CLEC shall have the option of employing the alternative terminal or disputing the claim of technical infeasibility pursuant to the dispute resolution provisions of this Agreement. No additional verification is needed by Qwest and CLEC shall tag their jumper wire.

9.5.4.3 Subject to the terms of 9.5.4.2, CLEC may perform a NID-to-NID connection, according to 9.5.2.3, and access the Customer field of the NID without notice to Qwest. CLEC may access the protector field of the NID by submitting a LSR.

This SGAT language provides everything that AT&T wants. There are only two possible exceptions. First, AT&T may want immediate access to the MTE Terminal/NID even before Qwest determines whether it or the landlord owns the facilities. Although this started at impasse in the emerging services docket, it became consensus and is reflected in SGAT § 9.3 .5.4.1. Second, AT&T may be objecting to issuing an LSR to obtain access to the protector side of the NID. This is equally unavailing. In its emerging services decision, the ACC made plain, over AT&T's objection, that it must submit LSRs to obtain access to subloops. The same logic applies here. Qwest is entitled to know what portion of its network is being used by CLEC for billing and repair purposes.

In summary, if all Staff intended was to ensure that CLECs can obtain the full capability and functionality of the NID, Qwest provides this already and has no objection. If, however, Staff's report is intended to state that CLECs can avoid their subloop obligations or CLECs can obtain access to the NID for free and without notice to Qwest, then Qwest objects. Staff should clarify this issue accordingly.

Impasse Issue No. 2: Staff Should Not Allow CLECs to Disconnect Qwest's Wires From the Protector Side of the NID.

This issue is purely one of safety. What AT&T seeks to do is create a hazardous situation in the Qwest network that could place end-users and Qwest technicians at risk of potential electrocution and its network at risk of potential damage and fire. Specifically, when a NID is out of capacity, AT&T seeks the authority to disconnect Qwest's wires

from the protector side of the NID – the protector grounds the wire and protects against electrical surge. That would leave Qwest's distribution facility unprotected, and in violation of the National Electric Safety Code ("NESC") and the National Electric Code ("NEC").

Moreover, at the end of the process when damage to Qwest's network or worse, injury to a person occurs, who will be liable for the damage/injury? Certainly the CLEC should be liable. However, especially in a MTE environment it may not even be apparent who disconnected Qwest's facilities from the NID. Qwest should not be placed in the unfair position of having its facilities tampered with thereby creating a hazardous situation. In an analogous situation where Qwest and CLEC facilities are in close proximity – collocation – the FCC made plain that ILECs can segregate their facilities from CLEC's for network security reasons. Specifically, the FCC said that because "physical security arrangements surrounding collocation space protect both incumbent and collocator equipment from interference by unauthorized parties, the Commission permitted incumbent LECs to require reasonable security."⁵ The FCC rationalized that a particular "approach is substantially less invasive of the incumbent's property rights (e.g., in terms of security, safety, and risk to incumbent LEC equipment)."⁶ The same logic applies here. The alternative is to place a second or larger NID, which is expressly permitted by the SGAT. See SGAT § 9.5.2.2.

Notwithstanding the safety concerns, AT&T argues, and Staff agreed, that the CLECs should be permitted to disconnect the Qwest distribution facilities where the work is performed "by qualified persons." *Report at ¶151*. The problem is that Qwest has had

⁵ FCC Docket No. 98-147, FCC 01-204 ¶85. (Aug. 8, 2001).

⁶ *Id.* at ¶60.

three engineers – unquestionably “qualified persons” – testify on this subject throughout its region and all three found it would be inappropriate, *per se*, to disconnect wires from the protector field and cap them off. The only evidence AT&T puts forth to support this strange recommendation is a 1969 Bell System practice. That Bell System Practice concerned situations when the NID is removed from the home altogether thereby removing the protector field. Thus, all this policy stands for is what a technician should do when there is no protector field in which to ground the wire. In other words, this document tells technicians how to make the best of a bad situation. However, when the NID remains in place – as would be the case here – AT&T’s own Bell System Practice states “do not disconnect the outside drop at the customer building.”⁷ The Multi State Facilitator used this very point to deny AT&T’s request on this issue. The Colorado Hearing Commissioner did likewise. The Arizona Staff should follow suit.

V. CONCLUSION

Qwest, again, commends the Staff for its hard work in completing this Report. Qwest is prepared to accept many aspects of the Report. Nonetheless, Qwest seeks reversal of three issues and clarification of one other. Qwest respectfully requests that the Staff modify its decision as reflected herein.

Respectfully submitted this 6th day of December, 2001.

⁷ See AT&T Exhibit at section 2.01 and Figure 2.

Respectfully submitted,

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